

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 03-223
FM Broadcast Stations.)	RM-10813
(LaGrange, Greenville and Waverly)	
Hall, Georgia))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 14, 2005

Released: December 16, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding.¹ Cox Radio, Inc., its wholly owned subsidiary, CXR Holdings, Inc. ("Cox Radio"), and Davis Broadcasting, Inc., of Columbus ("Davis Broadcasting") jointly filed Comments and Reply Comments. Infinity Broadcasting Corporation ("Infinity Broadcasting") filed Comments. For the reasons discussed below, we are substituting Channel 239A for Channel 239C3 at Greenville, Georgia, reallocoting Channel 239A to Waverly Hall, Georgia, and modifying the Station WKZJ license to specify operation on Channel 239A at Waverly Hall. To replace the loss of the sole local service at Greenville, we are reallocoting Channel 281C1 from LaGrange, Georgia, to Greenville, and are modifying the Station WALR-FM license to specify Greenville as its community of license.

Background

2. At the joint request of Davis Broadcasting, licensee of WKZJ, Channel 239C3, Greenville, Georgia, and Cox Radio, licensee of Station WALR-FM, Channel 281C1, LaGrange, Georgia, the *Notice* proposed the downgrade of Station WKZJ to Channel 239A and the change of its community of license to Waverly Hall. In order to replace the loss of the sole local service at Greenville, the *Notice* also proposed changing the community of license of Station WALR-FM, Channel 281C1, from LaGrange to Greenville. In response to the *Notice*, Infinity Broadcasting, licensee of Stations WVEE, WZGC and WAOK, Atlanta, Georgia, filed Comments. In its Comments, Infinity Broadcasting specifically states that it "does not oppose" the proposed reallocotments. Rather, Infinity Broadcasting requests that we "should take notice" that the Cox Radio and Davis Broadcasting proposal "are clearly linked" to a separate Cox Radio proposal in MB Docket No. 03-190 to relocate Station WBTS from Athens to Doraville, Georgia.² As a result of the instant proposal which relocates the Station WKLZ away from Atlanta and downgrades the allotment, Station WBTS would be able to relocate the Station WBTS transmitter site closer to Atlanta. In this regard, Infinity Broadcasting suggests that the parties have not

¹ *LaGrange, Greenville and Waverly Hall, Georgia* 18 FCC Rcd 21861 (MB 2003).

² *Athens and Doraville, Georgia*, 19 FCC Rcd 18746 (MB 2004).

complied with the "spirit" of Section 1.17 of the rules which requires a rulemaking proponent to provide all material information necessary to insure that factual statements made to the Commission are not incorrect or misleading.³

3. We are substituting Channel 239A for Channel 239C3 at Greenville, Georgia, reallocating Channel 239A to Waverly Hall, Georgia, and modifying the Station WKZJ license to specify operation on Channel 239A at Waverly Hall.⁴ This action is taken pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁵ *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁶ This reallocation would result in Waverly Hall having its first local service. Waverly Hall is an incorporated community with its own local government and elected officials. In addition, Waverly Hall has its own fire department, police department, post office, a private school and its own zip code. Waverly Hall also has its own local businesses, churches, and civic organizations. Finally, Waverly Hall has its own phone book through the independent telephone company, Waverly Hall Telephone, LLC.

4. In order to maintain local service in Greenville, we are reallocating Channel 281C1 from LaGrange, Georgia, to Greenville, and are modifying the Station WALR-FM license to specify Greenville as its community of license.⁷ This does involve a change in the Station WALR-FM transmitter site and LaGrange will continue to receive local service from three stations.

Comments of Infinity Broadcasting

5. In its Comments, Infinity Broadcasting refers to our earlier decision in *Athens and Doraville, Georgia*, in which we reallocated Channel 281C1 from Athens to Doraville, Georgia, and modified the Station WBTS license to specify Doraville as the community of license. That action provided a first local service to Doraville. Even though Doraville is located within the Atlanta Urbanized Area, we rejected the Infinity Broadcasting opposition comments asserting that this was merely an attempt to serve Atlanta. Infinity Broadcasting did not seek reconsideration of that decision. Instead, Infinity Broadcasting now contends that the "sole purpose" of the instant proposal is to "effectuate the first step of a two-step plan" of Cox Radio to move Station WBTS closer to Atlanta. As noted in *Athens and Doraville, Georgia*, Station WBTS will now serve 33% of the Atlanta Urbanized Area with a 70 dBu signal. As part of the proposed downgrade and reallocation to Waverly Hall, Station WKZJ will relocate its transmitter site 31 kilometers to the south, away from Atlanta. In turn, this would enable

³ 47 C.F.R. § 1.17.

⁴ The reference coordinates for the Channel 239A allotment at Waverly Hall, Georgia, are 32-33-58 and 84-41-03.

⁵ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990) ("Community of License").

⁶ 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁷ The reference coordinates for the Channel 281C1 allotment at Greenville, Georgia, are 33-24-24 and 84-50-03.

Station WBTS to relocate its transmitter site closer to Atlanta and significantly increase coverage. For this reason, Infinity Broadcasting requests that we require Cox Radio and Davis Broadcasting to fully disclose all agreements between the parties including any consideration paid or to be paid and whether this proposal is contingent on the grant of the Station WBTS reallocation proposal in MB Docket No. 03-190. Infinity Broadcasting concludes that only from this information can we determine whether this proposal advances the public interest as opposed to the private interests of the parties.

6. We will not require Cox Radio and Davis Broadcasting to submit copies of any agreements between them or disclose any consideration paid or to be paid. In the absence of the withdrawal of an expression of interest in an allotment proceeding, there is no such Commission requirement.⁸ There is no reason to do so in this instance. Each of these rulemakings advances Section 307(b) policies. Station WKZJ will provide a first local service to Waverly Hall and provide a significant public interest benefit to that community. As discussed in *Athens and Doraville, Georgia*, Station WBTS will also provide a first local service to Doraville. In this regard, we remain aware that Doraville is located within Atlanta Urbanized Area and that relocation of the Station WKZJ transmitter site could facilitate a relocation of the Station WBTS transmitter site closer to Atlanta. This is not a basis to deny a first local service to Waverly Hall or revisit our decision in *Athens and Doraville, Georgia*. In *Athens and Doraville, Georgia*, we did not blindly apply a first local service preference of the FM allotment priorities when Station WBTS reallocated its channel to a suburban community in the Atlanta Urbanized Area. In making that public interest determination, we applied existing precedent⁹ and considered the extent the station will provide service to the entire Atlanta Urbanized Area, the relative populations of the Doraville and Atlanta, and, most importantly, the independence of the Doraville. Infinity Broadcasting did not seek reconsideration of that determination regarding Doraville, and that proceeding is now final. As a Class C1 facility, Station WBTS already provides service to a significant portion of the Atlanta Urbanized Area. The fact that Station WBTS may relocate its transmitter site does not negate or provide a basis to revisit our earlier determination that a reallocation to Doraville is entitled to consideration as a first local service and be a significant benefit to Doraville.

7. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

8. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective January 30, 2006, the Table of FM Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Greenville, Georgia	281C1
LaGrange, Georgia	-----

⁸ Section 1.420(j) of the rules only requires such disclosure in connection with the withdrawal of an expression of interest by a party in an allotment rulemaking proceeding.

⁹ *See e.g. Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

Waverly Hall, Georgia

239A

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Davis Broadcasting Inc., of Columbus for Station WKJZ, Channel 239C3, Greenville, Georgia, IS MODIFIED to specify operation on Channel 239A at Waverly Hall, Georgia, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of CXR Holdings, Inc. for Station WALR-FM, Channel 281C1, LaGrange, Georgia, IS MODIFIED to specify operation on Channel 281C1 at Greenville, Georgia, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

11. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, each licensee is required to submit a rulemaking fee in addition to the fee required for the application to affect the change in community of license

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
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